

MEMORANDUM

IN THE CIRCUIT COURT FOR FREDERICK COUNTY

FREDERICK COUNTY, TO WIT:

Mary Ruth Culler (nee Harner), and :
 John M. Culler, her husband, Alden :
 E. Fisher, Attorney-in-Fact for :
 Archibald E. Fisher, and Vallie :
 Fisher, wife of Archibald E. Fisher :
 Edith J. Schildknecht, widow, and :
 John M. Culler, III and Patricia :
 Ann Culler, infants, by John M. : No. 16876 Equity.
 Culler, their father and next friend. :

vs. :

John M. Culler, III and Patricia Ann :
 Culler, infants :

MEMORANDUM

This action is filed under section 63 of Article 16, which provides essentially that where an infant is possessed of an interest in property, the court may, if it appear for the best interest of the infant, decree a sale of such property, if the provisions of the following section (64) are complied with.

Section 64 stipulates that (1) the guardian or next friend of such infant shall petition the court (2) the court shall appoint a guardian to submit an answer (3) proof supplied by at least two reputable witnesses.

That this action is filed under these sections and not under section 159 of Article 16 is due to the reasoning in Roche v. Waters, 72 Md. 269, where it was held that section 159 does not apply to cases where parties hold separate, consecutive interest, such as a life estate followed by a remainder or reversion, but is confined to cases where the interests are concurrent. In the instant case, there is a life estate in the petitioner Mary Ruth Culler, followed by remainders to either her children or other petitioners. This case follows the opinion in Gill v. Wells, 69 Md. 492, at 499, where the court says:

" In our opinion, counsel for the appellant is in error in supposing the jurisdiction came from the Act of 1785, ch. 72, sec. 12, extended by section 7 of the Act of 1831, ch. 311 (now section 159 of Article 16). As we have said, the infant was the owner in fee of the whole property, subject to her mother's life estate in one-half of it, and we think it clear that a tenant for life and the reversioner have no 'joint interest or interest in common,' and that they do not hold the estate 'otherwise concurrently'. They are separate owners of separate consecutive interest in the same land, and to such a case the statutes referred to have no application. But the Act of 1816, ch. 154, (now section 63, Article 16) exactly meet the case." See also Forbes v. Littell, 138 Md. 214.

W. CLINTON MCSHERRY
 ATTORNEY AT LAW
 FREDERICK, MARYLAND

Filed May 9, 1950